Supreme Court, U.S.
FILED

09-660 SEP 09 2009

OFFICE OF THE CLERK
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Case No.:

IN THE SUPREME COURT OF THE UNITED STATES

JAYRAJ NAIR
Petitioner,

vs.

THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF PLACER,

Respondent,

BINDU NAIR
Real Party in Interest.

On Petition for a Writ of Certiorari to the Supreme Court of California

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Was Petitioner deprived of his due process rights of an opportunity to be heard when a restraining order was issued against him based upon hearsay testimony and in which one of the protected persons was precluded from testifying at the trial?

Was Petitioner deprived of his constitutional rights to raise his children when they were removed from his custody without satisfying due process rights?

PARTIES TO THE PROCEEDING

The writ petition was taken from a family-law action in which Petitioner is Jayraj Nair and Respondent is his ex-wife, Bindu Nair. In the writ proceeding the respondent was Placer County Superior Court and the real party in interest was Bindu Nair.

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I. CITATIONS OF UNDERLYING OPINIONS

The underlying opinion from which the instant petition for writ of certiorari is being taken is Nair v. Superior Court of Placer County, California Supreme Court case no. S173589. (App A-1.) It is unreported.

The case underlying that case is Nair v. Superior Court of Placer County, California Appellate Court, Third District Court of Appeal, case no. C061761. (App A-2.) It is unreported.

The case underlying that case is Nair v. Superior Court of Placer County, Placer County Superior Court case no. SDR-26925. (App A-3-A-21.) It is unreported.

II. BASIS FOR JURISDICTION

This petition seeks review of the denial of Petitioner's writ petition to the California Supreme

Court, a copy of which is attached hereto. The order sought to be reviewed was entered on July 8, 2009.

This Court has jurisdiction to review the California Supreme Court decision denying petitioner's petition for review because the issue on review was a federal constitutional issue regarding due process rights. 28 U.S.C. §1257(a).

III. CONSTITUTIONAL PROVISIONS AT ISSUE

The United States Constitution provides, in relevant part, as follows: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law" U.S. Const., 14th Am., sec. 1. It further provides that no person shall "be deprived of life,

liberty, or property, without due process of law . . . ." U.S. Const., 5th Am.

IV. STATEMENT OF FACTS AND CASE

Petitioner is Father, Jayraj Nair ("Jayraj"); real party in interest is Mother, Bindu Nair ("Bindu"); their children are Suraj and Sujay Nair. Jayraj and Bindu are dissolving their marriage.

On February 4 through February 8, 2008, trial was held in Placer County Superior Court on issues including custody and visitation. (Exh 1 at p. 1.)[1] On April 2, 2008, the parties were served with a March 27, 2008 tentative statement of decision, titled Ruling After Custody Trial. (Exh 1.) In that tentative statement of decision, the court ordered Suraj (the older child) to attend

[1] / Citations are to the Exhibits filed in the Third District Court of Appeal as part of Petitioner's writ petition.

counseling sessions, as "the first step" toward reunifying him with Mother. (Exh 1 at p. 3.) The court found it in the best interests of both children for the parties to share physical custody of the children. (Exh 1 at p. 5.) The court set up a two-tiered "parenting schedule" whereby the two children (Suraj and Sujay) would be together on weekends, alternating between each parent's home, but that Suraj would not be going to Mother's house until the therapist believed it was in the children's best interests. (Exh 1 at pp. 5-6.)

On May 15, 2008, a hearing was held on Mother's ex parte request (filed that day) to change the custody arrangement. The court ordered, *inter alia*, that Father was to have two hours per week of supervised visitation with Sujay, and that the children were to have no contact with each other until a therapist was assigned

to Sujay and pending further order of the court. (Exh 3 at p. 22.)

On May 29, 2008, Mother filed another petition to remove Suraj from Father's custody. The court denied this motion, stating that "the proper remedy for enforcement of the court's orders is an OSC re contempt; removal of Suraj from father's custody is within the jurisdiction of County Counsel's office by way of a Welfare & Institutions Code section 300 proceeding." (Exh 4 at p. 24.)

On February 10, 2009, Mother filed an order to show cause seeking to have Suraj removed from Father's custody. (Exh 5.) This petition was not served on Father until February 20, 2009. (Exh 7 at p. 74.)

On February 11, 2009, the court entered a Restraining Order After Hearing, based upon a February 10, 2009 hearing, at which Father was not present. (Exh

6.) This order named Mother, along with Suraj and Sujay as restrained persons and included a child custody and visitation order granting sole legal and physical custody to Mother, with no visitation Father. (Exh 6 at p. 54.)

On February 20, 2009, Father was served with this court order. (Exh 7 at p. 74.) While Father was in court receiving these papers, Suraj was physically removed from Father's home in handcuffs and taken to psychiatric facility, where he stayed until at least March 9, 2009. (Exh 9 at p. 238; Exh 13 at p. 475.)

On February 27, 2009, Father filed an Answer to the TRO. (Exh 7.) He later filed supplemental declarations and additional exhibits. (Exhs 8, 9.) The evidentiary hearing was held on March 10 and 13, 2009. (Exh 13.) Mother was represented by counsel; Father was in pro per.

On March 13, 2009, Father filed a declaration stating that he had subpoenaed Dr. Blanco, the psychiatrist Mother had testified was treating Suraj, and the doctor had refused to testify, stating that he had no records concerning Suraj. (Exh 10 at p. 256.) This was corroborated by Father during the hearing. (Exh 13 at pp. 486-487.) The court stated that, notwithstanding Dr. Blanco's failure to appear, trial would be concluded that day. (Exh 13 at pp. 489-490.) And yet, during the hearing, the reunification therapist testified that Dr. Blanco thought Suraj had parental alienation syndrome, that he no ego, and that he was emotionally damaged. (Exh 13 at pp. 387, 428-429.) She also presented a confidential report that contained numerous references to such hearsay. (Exh 14.)

Moreover, Father specifically requested that the court allow Suraj to testify, and raised a due process issue thereby. (Exh 13 at p. 395 ["Your honor, from a process standpoint . . . ¶ . . . I also want to know if Suraj Nair—I am requesting the Court, have him talk to you directly."]) The court refused, stating, "I have made a very strong policy not to talk to the children." (Ibid.)

Petitioner also raised the due process issue of having subpoenaed a witness, who refused to appear at trial, while a third party was allowed to testify as to what that witness had said. (Exh 13 at pp. 486-493 ["Dr. Blanco is not here. I followed the due process to get him to testify in terms of what the facts are."])

On March 13, 2009, the court ruled that Father was prohibited from contacting Suraj and that the restraining order would be in effect for one year. (Exh 13 at pp. 578-579.) Mother's attorney prepared a

formal order, to which Father objected, as it included items that were never ruled upon by the court and on which no evidence had been presented. (Exh 11.) This order was entered on March 25, 2009. (Exh 12.)

On May 4, 2009, Jayraj filed a petition for writ of mandate to the Third District Court of Appeal. On May 28, 2009, this writ petition was summarily denied. (App. 2a.) On June 5, 2009, Jayraj filed a petition for review to the California Supreme Court. On July 8, 2009, this petition was denied. (App A-1.)

V. LEGAL ARGUMENT

A. Jayraj Was Deprived of His Due Process Right to an Opportunity to Be Heard

The trial court prohibited Suraj—the 12 year-old who was listed as an additional restrained person—from testifying at trial. This was not only a violation of Jayraj's due process rights to be heard through

witnesses; it was a violation of Suraj's civil rights to have been forcibly removed from the home of the one parent he loved without even allowing him to testify.

During the hearing, Jayraj asked the court to permit Suraj to testify. (Exh 13 at p. 117:10-13.) The court refused, stating "I will not talk to the child. I have made a very strong policy not to talk to the children." (Exh 13 at p. 117:15-16.) This was not only error; it was a deprivation of Jayraj's due process rights.

Given the importance of the proceedings, and the hearsay allegations that were being made as to Suraj's mental state, it was a violation of due process for the court not to allow Suraj to testify. Essentially, Mother was allowed to sequester the boy in a mental institution, against his will, while lodging allegations against his father in an effort to obtain a restraining order *that Suraj had no opportunity to testify he*

wanted. Jayraj raised this constitutional issue in his response to the restraining order. (Exh 7 at p. 94 ["Handcuffing a forcibly removing a child without due process . . . was a severe form of emotional abuse . . ."])

Jayraj had subpoenaed Dr. Blanco, the person whom Bindu had identified as Suraj's psychiatrist, to appear and produce his records concerning Suraj. (Exh 10.) Dr. Blanco refused to appear; he called Jayraj he morning of the hearing and stated that he had no records and would not be appearing. (Exh 13 at p. 486:13-25.) The court stated that, notwithstanding Dr. Blanco's failure to appear, trial would be concluded that day. (Exh 13 at pp. 489-490.) Thus was Jayraj deprived of cross-examining the one person who had the most knowledge as to Suraj's mental and emotional state and as to whether Suraj needed

protection from his father. And yet, during the hearing, Janelle Burrill had testified that Dr. Blanco thought Suraj had parental alienation syndrome, that he no ego, and that he was emotionally damaged. (Exh 13 at pp. 387, 428-429.) She also presented a confidential report that contained numerous such references. (Exh 14.) This hearsay testimony was the basis for the trial court's decision to prohibit Jayraj from contacting Suraj for one year.

Due process, at a minimum, requires that before one can be deprived of property—including the custody of a child—one must be given notice and an opportunity to be heard. Armstrong v. Manzo, 380 U.S. 545, 550 (1964).

In California, due process allows a party to appear and produce evidence, including the testimony of witnesses. See Fewel v. Fewel (1943) 23 Cal.2d 431, 433.

In Fewel, the trial court in a custody-modification hearing refused to take any testimony or evidence, and made its ruling based solely upon the recommendation of the court investigator. The California Supreme Court found the error reversible per se:

> Such procedure cannot be sustained. By it the plaintiff was denied the fair trial in open court to which she was entitled; she was deprived of the right to produce and have consideration given to material evidence; she was precluded from cross-examination of adverse witnesses; and the order rests upon no evidentiary foundation whatsoever. Such errors require a reversal of the order.

(Fewel, supra at p. 433.)

By refusing to allow Suraj to testify on his own behalf, or at Jayraj's request, and by allowing the trial to proceed based upon hearsay testimony while refusing to allow Jayraj to compel the presence of the witness whose words were being used in the courtroom, the court denied Jayraj his due process rights to a fair hearing and an opportunity to be heard.

Petitioner raised this due process issue during the underlying trial, in which he represented himself in pro per. He raised the due process issue of having subpoenaed a witness, who refused to appear at trial, while a third party was allowed to testify as to what that witness had said. (Exh 13 at pp. 486-493 ["Dr. Blanco is not here. I followed the due process to get him to testify in terms of what the facts are."]) He also raised the due process issue of requesting that his son be permitted to testify at the hearing. (Exh 14 at p. 395

["Your honor, from a process standpoint . . . ¶ . . . I also want to know if Suraj Nair—I am requesting the Court, have him talk to you directly."])

The record, as a whole, shows that Petitioner intended to raise the federal due process issue at trial, even though he did not use those specific words. See New York ex. rel. Bryant v. Zimmerman, 278 U.S. 63, 67 (1929); Eddings v. Oklahoma, 455 U.S. 104, 113-114, n. 9 (1982).

Petitioner also raised this issue in his petition for writ of mandate to the California appellate court. He argued that his due process rights to present the testimony of witnesses had been violated. Although Petitioner cited only California cases therein, he raised federal issues, and the cases which he cited referred to federal cases. See, e.g., In re Henry V. 119 Cal.App.4th

522, 529-530 (2004), citing Santosky v. Kramer, 455 U.S. 745, 753 (1982).

B. The Order Violates Jayraj's Constitutional Rights to Raise His Children

In his response to the request for restraining order, Jayraj raised this constitutional issue, stating,

> "A parent's right to care, custody and management of a child is a fundamental liberty interest protected by the federal Constitution that will not be disturbed except in extreme cases where the parent acts in a manner incompatible with parenthood." (In re Marquis D. (1995) 38 Cal.App.4th 1813, 1828.)

(Exh 7 at p. 96.) Although he cited to a California case, the reference is to a federal constitutional right, and the Marquis case cites to federal law. See, Marquis, supra at p. 1828, citing Santosky v. Kramer 455

U.S. 745, 753 (1982) and Stanley v. Illinois, 405 U.S. 645, 651 (1972).

Parents have a constitutionally protected interest in the companionship, care, custody, and management of their children. Haag v. Cuyahoga County, 619 F.Supp 262, 276 (D.C. Ohio 1985), aff'd 798 F.2d 1414.

By the restraining order, Jayraj's parental rights to Suraj were effectively terminated: he is prohibited from seeing Suraj for one year—and from having *any contact* with Suraj during that time. This is a deprivation of Jayraj's constitutional right to raise his children. The order eviscerates Jayraj's right to raise his son without satisfying the constitutional requirements of such.

"A parent's right to care, custody and management of a child is a fundamental liberty interest protected by the federal Constitution that will not be

disturbed except in extreme cases where a parent acts in a manner incompatible with parenthood." In re Marquis D., supra 38 Cal.App.4th at p. 1828, citing Santosky v. Kramer, supra 455 U.S. at 753 and Stanley v. Illinois, supra 405 U.S. at 651.

C. CONCLUSION

By taking Suraj from his home, placing him in a psychiatric facility, and prohibiting him from having any contact with his father for one year—without allowing him to even testify at the hearing—the trial court disregarded both Jayraj's and Sujraj's constitutional due process rights.

Petitioner respectfully requests that this Court grant certiorari and order the respondent Superior Court of California in and for the County of Placer to set aside and vacate its order of March 25, 2009 and to enter a

new and different order denying the request for restraining order.

Dated: 11/30, 2009

Respectfully submitted,

STEPHANIE J. FINELLI,
Attorney for Petitioner,
Jayraj Nair

APPENDICES

A. California Supreme Court Denial of Petition for Review(July 8, 2009).....App A-1

B. Denial of Petition for Writ of Mandate, California Appellate Court, Third District Court of Appeal (May 28, 2009).....App A-2

C. Granting of Restraining Order, Placer County Superior Court (March 13, 2009) .....App A-3

Court of Appeal, Third Appellate District – No. C061761

S173589

IN THE SUPREME COURT OF CALIFORNIA

En Banc

JAYRAJ NAIR, Petitioner,

v.

THE SUPERIOR COURT OF PLACER COUNTY, Respondent;

BINDU NAIR, Real Party in Interest.

The petition for review is denied.

Supreme Court
FILED
Jul – 8 2009
Frederick K. Ohlrich Clerk
Deputy

GEORGE /s/
Chief Justice

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

FILED
MAY 28 2009
COURT OF APPEAL–THIRD DISTRICT
BY DEENA C. FAWCETT Deputy

JAYRAJ NAIR,

Petitioner,

v.

THE SUPERIOR COURT OF PLACER COUNTY,

Respondent;

BINDU NAIR,

Real Party in Interest.

C061761
Placer County
No. SDR26925

BY THE COURT:

The petition for writ of mandate or prohibition is denied.

Dated: May 28, 2009 BLEASE, Acting P.J.

DV-130 Restraining Order After Hearing
(Order of Protection)

Placer County Superior Court of California

Filed March 25 2009
Don Schell—Interim Executive Officer & Clerk
/s/ Deputy

Case Number: **SDR-26925**

(1) Protected person's name:

BINDU NAIR

Lawyer:

Karen L. Mathes, Esq. SBN 126340

P.O. Box 366

Wallace, CA 95254

(209) 763-5648

(2) List the full names of all family or household members protected by this order:

BINDU NAIR (EX-WIFE)

SURAJ NAIR (CHILD)

SUJAY NAIR (CHILD)

(3) Restrained person's name:

JAYRAJ NAIR

Description of that person: Sex: M Height: 5'7" Weight: 175 Race: East Indian

Hair Color: BLACK Eye Color: BLACK Age: 41 Date of Birth: 7/15/67

Relationship to protected person: EX-HUSBAND AND FATHER OF TWO CHILDREN

(4) The Court orders are on pages 2 and 3 and attachment pages (if any).

The hearing was on: 3/10/09 & 3/13/09 with Hon. J. Richard Couzens

The orders end on: March 13, 2010

(5) The people in (1) and (3) must return to court on _____ to review _____[blank]

Certificate of Compliance With VAWA

This protective order meets all Full Faith and Credit requirements of the Violence Against Women Act, 18U.S.C. §2265 (1994) (VAWA). This court has jurisdiction over the parties and the subject matter; the restrained

person has been afforded reasonable notice and an opportunity to be heard as provided by the laws of this jurisdiction. This order is valid and entitled to enforcement in each jurisdiction throughout the 50 United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as it were an order of that jurisdiction.

(6) Personal Conduct Orders

The person in (3) must not do the following things to the protected people listed in (1) and (2):

a. Harass, attack, strike, assault (sexually or otherwise), hit, follow, stalk, destroy personal property, disturb the peace, keep under surveillance, or block movements

b. Contact (either directly or indirectly), telephone, or send message or email

c. Take any action, directly or through others, to get the addresses or locations of any protected persons or their family members, caretakers or guardians.

Peaceful written contact through a lawyer or process server or another person in order to serve legal papers is allowed and does not violate this order.

(7) Stay-Away Order

The person in (3) must stay at least 100 yards away from

a. The person listed in (1)

b. The people listed in (2)

c. Home, job, vehicle of person in (1)

d. The children's school or child care

e. Offices of court-appointed therapists for children

(8) Move Out Order [blank]

(9) Child Custody and Visitation

Child custody and visitation are ordered on the attached Form DV-140 or DV-145

(10) Child Support [blank]

(11) Spousal Support [blank]

(12) No Guns or Other Firearms or Ammunition

The person in (3) cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, firearms, or ammunition.

(13) Turn in or Sell Guns and Firearms

The person in (3):

Must sell to a licensed gun dealer or turn into police any guns or firearms that he or she has or controls. This must be done within 24 hours of being served with this order.

Must bring a receipt to the court within 48 hours of being served with this order, to prove that guns and firearms have been turned in or sold.

(14) Record Unlawful Communications

The person in (1) has the right to record communications made by the person in (3) that violates the judge's orders.

(15) Batterer Intervention Program

The person in (3) must go to and pay for a 52-week batterer intervention program and show written proof of completion to the court. This program must be approved by the probation department.

(16) No Fee to Notify (Serve) the Restrained Person

If the sheriff or marshal serves this order, he or she will do it for free.

(17) Other Orders [blank]

(18) Service

The people in (1) and (3) were at the hearing or agreed in writing to this order. No other proof of service is needed.

(19) Attached pages are orders

Number of pages attached to this 5-page form: 14

All of the attached pages are part of this order.

Attachments include DV-140, DV-145, DV-170

Other: court orders OSC/temp. orders signed by court 2/10/09 w/attached recommendations of Dr. Burrill.

Date: 3/24/09 **Honorable J. Richard Couzens**

/s/

Instructions for Law Enforcement

(20) Start Date and End Date of Orders

The orders start on the earlier of the following dates:

The hearing date on page 1 or

The date next to the judge's signature on page 3

The orders end on the end date in item 4 on page 1. If no end date is listed, they end 3 years from the hearing date.

(21) Arrest Required If Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Penal Code §§836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6.

(22) Notice/Proof of Service

Law enforcement must first determine if the restrained person had notice of the orders. If notice cannot be verified the restrained person must be advised of the terms of the orders. If the restrained

person then fails to obey the orders, the officer must enforce them. (Family Code §6383.)

Consider the restrained person "served" (noticed) if:

The officer sees a copy of the Proof of Service or confirms that the Proof of Service is on file, or

The restrained person was at the restraining order hearing or was informed of the order by an officer. (Fam.Code §6383; Pen. Code §836(c)(2).) An officer can obtain information about the contents of the order in the Domestic Violence Restraining Orders System (DVROS). (Fam.Code §6381(b), (c).)

(23) If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact from the restrained person, the orders remain in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen.Code § 13710(b).)

(24) Child Custody and Visitation

The custody and visitation orders are on Form CV-140, items (3) and (4). They are sometimes also written on additional pages or referenced in DV-140 or other orders that are not part of the restraining order.

Forms DV-100 and DV-105 are not orders. Do not enforce them.

(25) Enforcing the Restraining Order in California

Any law enforcement officer in California who receives, sees, or verifies the orders on a paper copy, the California Law Enforcement Telecommunications System (CLETS), or in an NCIC Protection Order File must enforce the orders.

(26) Conflicting Orders

A protective order issued in a criminal case on From CR-160 takes precedence in enforcement over any conflicting civil court order. (Pen.Code §136.2(e)(2).) Any nonconflicting terms of the civil restraining order remain in full force. An emergency protective order (Form EPO-001) that is in effect between the same parties and is more restrictive than

other restraining orders takes precedence over all other restraining orders. (Pen.Code § 136.2.)

Warnings and Notices to the Restrained Person in (3)

(27) If you do not obey this order, you can be arrested and charged with a crime.

It is a felony to take or hide a child against this order. You can go to prison and/or pay a fine.

If you travel to another state of to tribal lands or make the protected person do so, with the intention of disobeying this order, you can be charged with a federal crime.

If you do not obey this order, you can go to prison and/or pay a fine.

(28) You cannot have guns, firearms, and/or ammunition

You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, firearms, or ammunition while the order is in effect. If you do so, you can go to jail and pay a $1,000 fine. You must sell to a licensed gun dealer or turn into police any guns or firearms that you have or control.

The judge will ask you for proof that you did so. If you do not obey this order, you can be charged with a crime. Federal law says you cannot have guns or ammunition while the order is in effect.

Clerk's Certificate

I certify that this Restraining Order After Hearing (Order of Protection) is a true and correct copy of the original on file in the court.

[COURT SEAL]

Date: 3/25/09 Clerk, by /s/, Deputy

DV-140 Child Custody and Visitation Order

This form is attached to DV-130

Protected person's name: BINDU NAIR, Mom

Other parent's name: JAYRAJ NAIR, Dad

The Court Orders:

Child Custody is ordered as follows:

Suraj Nair (DOB 7/31/96) Legal Custody to MOM; Physical Custody to Mom

Sujay Nair (DOB 12/29/03) Legal Custody to MOM; Physical Custody to Mom

Child Visitation is ordered as follows:

No visitation to Dad. No visit-Suraj; supervised visit order in place for Sujay.

Travel With Children

Dad must have written permission from the other parent, or a court order, to take the children outside of: NO TRAVEL AT ALL WITH SURAJ OR SUJAY.

Child Abduction

There is a risk that one of the parents will take the children out of California without the other parent's permission. The orders in Form DV-145 are attached and must be obeyed.

Jurisdiction

This court has jurisdiction to make child custody orders in this case under the Uniform Child Custody Jurisdiction and Enforcement Act (part 3 of the California Family Code starting with section 3400).

Notice and Opportunity to Be Heard

The responding party was given notice and an opportunity to be heard as provided by the laws of the State of California.

County of Habitual Residence

The country of habitual residence of the child or children in this case is the United States of America.

Penalties for Violating This Order

If you violate this order, you maybe subject to civil or criminal penalties or both.

DV-145 Order: No Travel With Children

This form is attached to DV-140 Child Custody and Visitation Order

(1) Protected Person's name: BINDU NAIR, Mom

(2) Other Parent's name: JAYRJA NAIR, Dad

(3) The Court finds there is a risk that JAYRAJ NAIR might take the child without permission because that parent:

a. Has violated—or threatened to violate—a custody or visitation order in the past;

c. Has done things that make it easy for him or her to take the children without permission. He or she has applied for a passport, birth certificate, or school or medical records;

d. Has a history of domestic violence, child abuse, not cooperating with the other parent in parenting;

f. Has family or emotional ties to another county, state, or foreign country.

The Court makes the following orders to prevent the parent in (3) from taking the children without permission. These orders are valid in other states and

any country that has signed the Hague Convention on The Civil Aspects of International Child Abduction.

(4) Post a Bond [blank]

(5) Do Not Move Without Permission of the Other Parent or Court Order

The parent in (3) must not move with the children without permission in writing from the other parent or a court order.

(6) Do Not Travel Without Permission of the Other Parent or Court Order

The parent in (3) must NOT travel with the children outside this county, California, the United States, no travel with children.

(7) Notify other State of Travel Restrictions [blank]

(8) Turn in and Do Not Apply for Passports or Other Vital Documents

The parent in (3) must not apply for passports or other documents (such as visas or birth certificates) that can be used for travel, and must turn in the following documents: any current passport/applications for passports for Jayraj or children.

(9) Provide Itinerary and other Travel Documents [blank]

(10) Notify Foreign Embassy or Consulate of Passport Restrictions

The parent in (3) must notify the embassy or consulate of India of this order and provide the court with proof of that notification within 10 days.

(11) Foreign Custody and Visitation Order [blank]

(12) Enforcing the Order

The court authorizes any law enforcement officer to enforce this order. In this county, contact the Child Abduction Unit of the Office of the District Attorney at 10810 Justice Center Drive, Ste. 240, Roseville, CA 95678

(13) Other [blank]

Notice to Authorities in Other States and Countries

This court has jurisdiction to make child custody orders under California's Uniform Child Custody Jurisdiction and Enforcement Act (California Family Code, part 3 §3400 et. seq.) and the Hague Convention on The Civil Aspects of International Child Abduction (42 U.S.C. §11601 et. seq.). If jurisdiction is based on other factors, they will be listed in paragraph 13 above.

Date: 3/24/09 Honorable J. Richard Couzens /s/

DV-170 Other Orders

This form is attached to DV-140 Child Custody and Visitation Order (Order of Protection).

(1) Protected Person's name: BINDU NAIR, Mom

(2) Other Parent's name: JAYRJA NAIR, Dad

(3) Property Control [blank]

(4) Debt Payment [blank]

(5) Property Restraint [blank]

(6) Attorney Fees and Costs [blank]

(7) Payments for Costs and Services [blank]

(8) Other Orders

See Attachment #1 to DV-170 #8 Other Orders Attached Hereto.

ATTACHMENT (Number): 1

DV-170—other orders--¶8 (other orders)

1. Mother shall have sole legal and sole physical custody of both children—Suraj and Sujay Nair.

2. The court finds that alienation of Suraj Nair from his mother by his father has been established by the evidence in this case. The evidence on which the court relies is contained in the reports of Dr. Burrill and the comments of other court-appointed therapists in this case, as well as the following evidence: testimony of Kelly Graham regarding the child's extreme reaction to mother's presence on the child's school campus; evidence of father not fully complying with court orders reflecting a lack of commitment to engage in the counseling and reunification program laid out by the court; evidence of father's desire to control things by taking Suraj to an unauthorized therapist, by using father's own doctor for a psychiatric evaluation instead or relying on neutral court evaluators, by extremely inappropriate conduct in having Suraj pay for his own counseling sessions, and by evidence that father has not undertaken any supervised visitation with Sujay Nair.

3. The court reaffirms that it is not in the best interests of Suraj Nair for father to have any contact at this time. The court finds that contact between father and Suraj will substantially undermine the therapeutic efforts that are being undertaken. The court clearly finds that contact by father with Suraj is not in the child's best interests. The court further finds that it would be detrimental to Suraj's interests if contact by father with Suraj was allowed. This order for "no contact" means direct or indirect contact—either directly by father or indirectly with the child through another person or means, without court approval.

4. With respect to Suraj Nair, supervised visitation orders remain in effect as previously ordered.

5. The court has continuing jurisdiction to renew these orders until the child(ren) are 18 years old.

6. The court has continuing jurisdiction to modify these orders based on change of circumstances.

7. The court reaffirms all prior orders not modified by this order.